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## The Norms of National Law Forming the Basis for the Shaping and Implementing of State Policy in the Field of Energy Security. Discussion Based on the Polish Legal Order<sup>1</sup>

### Introduction: The Concepts of State Policy and Energy Policy

The term “public policy” (“state policy”), in a legal and political sense can be understood as a series of coordinated, purposeful and targeted actions of public authority bodies aimed at achieving certain states, conditions or objectives, and at materialising certain values associated with the realisation of the common good. State policy comprises a certain group of spheres and fields which determine the internal division of all the state actions aimed at the accomplishment of its goals and tasks.<sup>2</sup> Irrespective of the general division of state policy into the internal (domestic) and external (foreign) policy sphere, of key importance is the division of the public policy into specific sectors associated with the basic fields of socio-political, economic, technical, scientific and cultural activity of the state.

One of the types of sectoral state policies is the energy policy. The abovementioned state policy sector mainly involves the process of formulating state assumptions, conditions and goals associated with ensuring energy security, proper management of fuels and energy (including its production and distribution) and protection of the interests of energy consumers. The state energy policy also involves implementation processes of the above conditions, assumptions and goals as well as an evaluation of the effectiveness in the accomplishment of general and specific goals of such policy. This approach is consistent with the concept of public policy structure. In the theory of administration and management, the process of public policy implementation is first and foremost sub-

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<sup>1</sup> The paper was developed as a part of the research project financed by the National Science Center on the basis of the decision no. DEC-2013/09/B/HS5/01060.

<sup>2</sup> Cf. e.g. O.E. Hughes, *Public Management and Administration. An Introduction*, New York 2003, p. 113 et seq.; R.K. Sapru, *Public Policy. Formulation, Implementation and Evaluation*, New Delhi 2009, p. 4 et seq.

ject to conceptualisation by means of a policy cycle model, within which a few basic stages have been differentiated.<sup>3</sup> These stages do not form a linear or sequential order, but take the form of a circular structure, a specific continuous cycle, a non-final and repeatable public policy planning, formulation and implementation mechanism.<sup>4</sup> The cycle, understood in this manner, includes the following stages: political agenda-setting, policy formulation, policy decision-making, policy implementation and policy evaluation. A reference to the above approach is provided by these definitions of energy policy which demonstrate the complexity as well as the legal and factual character of actions taken by the state authority in order to accomplish the socio-economic goals set in the political process regarding the energy sector of the national economy.<sup>5</sup>

### Energy Security Concept in the Polish Legal Order

The concept of energy security is deemed by the lawmaker, as the central and basic element that defines the state energy policy. One can be said that in the Polish legal order the concept of energy policy is concentrated around the premise of energy security. Pursuant to Article 13 of the Energy Law Act of 10 April 1997 (the ELA)<sup>6</sup>, the purpose of the state energy policy is to ensure the country's energy security, improved competitiveness of the economy and its energy efficiency, as well as environmental protection.

The term 'energy security' is defined by law<sup>7</sup> as "the condition of economy which makes it possible to fully satisfy the consumers' current and prospective demand for fuels and energy, in a technically and economically justified manner, and meeting the environmental protection requirements". In the interpretation of the Polish legislator, the general state of energy security has been linked to at least several elements of the energy management system. It is possible, on the one hand, to distinguish the concept of security of electricity supply to mean the ability of the electrical power system's ensuring secure operation of the electrical power network and balancing the electricity supply

3 V. W. Jann, K. Wegrich, *Theories of Policy Cycle* in: *Handbook of Public Policy Analysis: Theory, Politics, and Methods*, eds. F. Fischer, G.J. Miller, M.S. Sidney, Boca Raton – London – New York 2007, p. 43 et seq.

4 M. Kamiński, *Procedury administracyjne trzeciej generacji a transformacje struktur administracji publicznej i metod regulacji administracyjnoprawnej* in: *Struktury administracji publicznej: Metody, Ogniw, Więzi*. Vol. 1, ed. A. Mezglewski, Rzeszów 2016, p. 293 et seq.

5 V. A. Walaszek-Pyziol, *Energia i prawo*, Warszawa 2002, p. 13. According to the Author, energy policy is a "complex of functionally related legal and factual actions taken by the state (and more precisely by state authorities) aimed at such formation of the energy sector of the economy (its organisation and rules of operation) that ensures optimum achievement of specific socio-economic goals)".

6 Journal of Laws of 2018, item 755 as amended.

7 See article 3 point 16 of the ELA.

with demand (Article 3 point 16a of the ELA). Having a wide range of meanings, the term involves not only ensuring a stable, continuous and proper operation of the electrical power network as well as energy production and distribution within the network, but also ensuring continuous energy supply to all consumers, in compliance with the current level of energy demand. On the other hand, the lawmaker defines secure operation of the electrical power network as its uninterrupted operation, as well as meeting the requirements for quality parameters of the electricity and customer service quality standards, including the permitted interruptions in electricity supply to end users, under foreseeable conditions of operation of the network (Article 3 point 16b of the ELA). This is a narrow (technological) approach to energy security that refers to the technical and quality requirements of the electrical power supply network and the electricity itself.

### **Normative Basis of the Energy Security Policy in the Polish Legal Order**

In connection with the above remarks, it can be assumed that the basic element and purpose of Poland's energy policy is to ensure energy security at the national level. It is correctly pointed out in the literature that, by type, energy security is a separate category of state security<sup>8</sup> – both in the external and internal dimension – which combines the components of the political, social, economic and ecological security of the state. Energy security can be also regarded as one of the normative values that is subject to constitutional protection.<sup>9</sup>

Assuming that energy security is *de lege lata* the main goal and element of the national energy policy of the Republic of Poland, the need arises to consider the normative basis for the determination, implementation and verification of political actions taken by the public authorities in the field of energy security.

In this respect, it should be noted that not all the stages of the energy policy cycle are subject to strict and direct legal determination. It is a consequence of an inability to create rigid and content-full normative foundations of state policy.<sup>10</sup> Due to the existence in the legal system of the so-called “static relations” between norms and an absence of

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8 Cf. M. Pawełczyk, *Publicznoprawne obowiązki przedsiębiorstw energetycznych jako instrument zapewnienia bezpieczeństwa energetycznego w Polsce*, Toruń 2013, pp. 44–45; I.M. Jankowska, *Bezpieczeństwo energetyczne w polityce bezpieczeństwa państwa*, „Studia Lubuskie” 2015, Vol. XI, p. 149 et seq.

9 Cf. M. Domagała, *Bezpieczeństwo energetyczne. Aspekty administracyjno-prawne*, Lublin 2008, p. 25; F. Elżanowski, *Polityka energetyczna. Prawne instrumenty realizacji*, Warszawa 2008, p. 182.

10 V. M. Kamiński, *Mechanizm i granice weryfikacji sądownoadministracyjnej a normy prawa administracyjnego i ich konkretyzacja*, Warszawa 2016, p. 107.

a comprehensive and closed source of the contents of statutory norms at the level of the main substantive norms of the legal system, constitutional regulations that set the directions and goals of the state policy are not only of a general and essentially open character, but additionally require for their concretisation continuous and situationally conditioned political decisions, which refer to non-legal norms and values in the content layer. The constitution itself, granting a largely blanket authorisation to substantive concretisation through legislation, is thus subjected to ‘politicisation’, and the norms resulting therefrom have the character of ‘political law’.<sup>11</sup>

### **Categories of the Norms Shaping and Implementing of the Energy Security Policy in the Polish Legal Order**

Creating the legal basis for the determination, concretisation and implementation of a specific type of public policy requires the use of specific normative structures, which on the one hand, are to set binding goals, directions and conditions for the actions of state authorities, and on the other hand, ensure the necessary degree of freedom of concretisation, in particular in the field of shaping the contents of the acts which realize the state policy (including acts of planning or programming character). In the sphere of administration and legal regulations, such normative structures are referred to as ‘goal-oriented norms *sensu largo*’.<sup>12</sup> Norms of this kind mainly include program-, task- and direction-oriented norms, goal-oriented norms in the strict sense, planning norms as well as norms-principles in the strict sense. In the theory of administrative law, the view that the goal-oriented norms are strictly related to the norm-principles has been expressed.<sup>13</sup>

In vertical terms, of fundamental importance are constitutional and statutory norms-principles as well as goal-oriented norms which set the normative basis for the state policy in general or in specific fields.

Regarding the constitutional basis of the state energy policy and state security policy, the need arises to point out in this respect, above all, the main substantive norms of the legal system, including the norm-principle of the common good as the uppermost goal of the state (Article 1 of the Constitution of the Republic of Poland<sup>14</sup>), and the main

11 Cf. e.g. Ch. Gusy, *Staatsrecht und Politik*, „Österreichische Zeitschrift für öffentliches Recht und Völkerrecht“ 1984, Nr. 35, pp. 84–85.

12 M. Kamiński, *Mechanizm i granice weryfikacji sądowoadministracyjnej...*, p. 105 et seq.

13 Cf. M. Kamiński, *Normy-zasady prawa administracyjnego i ich konkretyzacja*, in: *Zasady w prawie administracyjnym. Teoria, praktyka, orzecznictwo*, eds. Z. Duniewska, M. Stahl, A. Krakafa, Warszawa 2018, p. 62 et seq.

14 The Constitution of the Republic of Poland of 2 April 1997, Journal of Laws no. 78, item 483 as amended.

program norms, including the norm-principle of ensuring the security of the citizens (Article 5 of the Constitution of the Republic of Poland).

At the statutory level, however, of key importance are the goal-oriented norms which form a certain sequence according to the increasing degree of specificity or types of the related legal instruments of implementation.<sup>15</sup> These norms set the general framework basis for the determination, concretisation, shaping and implementation of the state energy policy.<sup>16</sup>

First, it is possible to differentiate statutory goal-oriented norms of the state energy policy. Norms in this category define or determine the assumptions, conditions and general goals of the state as regards to the energy policy. A statutory obligation to establish such norms results from the constitutional program - or goal - and task-oriented norms, which by exposing specific values and legal goods, make certain state goals and tasks the objects of the necessary and intensive statutory concretisation. Concretisation of framework constitutional norms consists in specifying the subjective scope of the statutory protection, its essence and goals.

Of fundamental importance for the state energy policy is, of course, the contents of Article 13 of the ELA, which determines the goals of the state energy policy. It should be noted, however, that in the light of the provisions of the Energy Law Act, the term 'state energy policy' can be understood in two ways. Firstly, in a narrow sense, this term refers to the name of an internal policy document adopted by resolution of the Council of Ministers (Article 15a section 1 of the ELA). Secondly, in the broad (proper) sense, this term comprises all the actions taken by the state authorities in order to achieve the goals in the field of the energy sector of the economy.<sup>17</sup> That is why, it should be acknowledged that the goals of the national energy policy result from Article 13 of the ELA, while the resolution of the Council of Ministers, referred to in Article 15a section 1 of the ELA, is the main legal instrument of concretisation of the statutory goals of the state energy policy.

Although there is no doubt that administrative policy acts (documents)<sup>18</sup> that concretize the statutory norms forming the basis for the determination and implementation

15 Cf. M. Kamiński, *Mechanizm i granice weryfikacji sądowoadministracyjnej...*, p. 113 et seq.

16 Cf. e.g. A. Walaszek-Pyziół, *Kształtowanie i realizacja polityki energetycznej państwa na gruncie ustawy Prawo energetyczne (podmioty i instrumenty)* in: *Administracja publiczna w państwie prawa. Księga jubileuszowa dla prof. Jana Jendroski w osiemdziesiąt rocznicę urodzin i pięćdziesięciolecie pracy naukowej*, eds. B. Adamiak, J. Boć, K. Nowacki, M. Miemieć, „Acta Universitatis Wratislaviensis” No. 2154, Prawo CCLXVI, Wrocław 1999, p. 411 et seq.; A. Walaszek-Pyziół, *Prawne problemy kształtowania i realizacji polityki energetycznej państwa*, „Przegląd Ustawodawstwa Gospodarczego” 1999, Vol. 9, p. 5 et seq.

17 M. Domagała, *Polityka energetyczna* in: *Polityka administracyjna. IV Międzynarodowa Konferencja Naukowa, Stryków 7–9 września 2008*, ed. J. Łukasiewicz, Rzeszów 2008, p. 205.

18 In the Polish theory of administrative law, administrative policy acts (documents) are usually identified with broadly understood planning acts (documents). See e.g. Z. Duniewska, M. Górski, B. Jaworska-Dębska, E. Olejniczak-Szałowska, M. Stahl, *Plany, strategie, pro-*

of state policy can be of a different nature, a situation when the basic document that concretizes the state policy goals and in fact determines the contents thereof, assumes a legal form of an internally binding legal act (Article 93 section 1 of the Constitution of the Republic of Poland), arousing legitimate doubts of legal and constitutional character.<sup>19</sup> It is worthwhile to bear in mind that a resolution of the Council of Ministers is not only targeted at organisational units of government administration, but also at self-government administration entities, and – what is even more important – at non-public entities. Despite the fact that, by means of simplification, it can be assumed that the authorities of self-government units are, in terms of functions or tasks, subordinated to the contents of the above resolution as part of the broadly understood state apparatus, even indirect binding force of the resolution towards private entities disturbs the dualistic division into externally (generally) and internally binding sources of the law.

Second, of essential importance are the statutory directional and determinative norms. Such norms determine the obligations of state authorities and other bodies performing public tasks regarding the preferred direction of actions or the manner of implementation of preferred values that are to be realized. In addition, such norms determine specific guiding principles, which provide a basis for any actions taken in order to achieve the statutory goals and tasks or which are to be taken into account as part of actions of this type.

The elements and contents of such norms can be found in the provisions of Article 1 section 2 and Article 15 section 1 of the ELA. The lawmaker explicitly declares the directions and determinants of the energy law regulation and energy policy, pointing out that they should aim at creating the “conditions for sustainable development”<sup>20</sup> of the country, ensuring energy security, economical and rational use of fuels and energy, development of competition, counteracting the negative effects of natural monopolies, taking into account the environmental protection requirements, obligations resulting from international agreements and balancing the interests of energy enterprises and fuel and

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*gramy i inne zbliżone formy prawne działania administracji* in: *Podmioty administracji publicznej i prawne formy ich działania. Studia i materiały z Konferencji Naukowej poświęconej Jubileuszowi 80-tych urodzin Profesora Eugeniusza Ocbendowskiego*, Toruń 2005, pp. 364–373; M. Stahl, *Szczególne prawne formy działania administracji* in: *System Prawa Administracyjnego. Prawne formy działania administracji*, Vol. 5, eds. R. Hauser, Z. Niewiadomski, A. Wróbel, Warszawa 2013, p. 364 et seq.; J. Jeżewski, *Polityka administracyjna. Zagadnienia podstawowe* in: *Administracja publiczna*, ed. J. Boć, Wrocław 2003, p. 325 et seq.

19 See e.g. A. Walaszek-Pyziół, *Energia i...*, p. 16.

20 Polish legislator defines the term sustainable development in Article 3 point 50 of the Act of 27 April 2001 Environmental Protection Law (Journal of Laws of 2018, item 799 as amended), assuming that it is “the socio-economic development, in which there occurs the process of integration of political, economic and social activities, with the balance of nature and the sustainability of core environmental processes, in order to guarantee the possibilities to meet the basic needs of the individual communities or nationals of both the present generation and future generations”.

energy consumers”, and the resolution adopting the state energy policy is to be worked out “in accordance with the principle of sustainable development of the country”.

Third, an important category of norms that form the basis for the shaping and implementation of state energy policy and state energy security policy are task-oriented norms.

Norms of this category, on the one hand, determine detailed areas of state activity, the management of which lies in the public interest and serves the common good, and on the other hand – determine the manners and means of achieving the state policy goals in these areas. The task-oriented norms are, in some sense, of executive character in relation to the constitutional and statutory goal-oriented norms of a higher degree of generality.

With regards to the energy policy, the task-oriented norms are assigned to entities obliged to accomplish tasks in the field of energy management. Thus, in accordance with Article 12 section 2 of the ELA, the tasks in the field of energy policy entrusted to the minister competent for energy matters include: 1) proposal preparation of the state energy policy and coordination of its implementation; 2) specifying the detailed terms of planning and operation of fuel and energy supply systems according to the procedure and in the scope specified by the Act; 3) supervising the security of supply in gaseous fuels and electricity and the supervision of the operation of the national energy systems to the extent specified by the Act; 4) cooperation with the voivodes (governors) and local authorities in the issues related to planning and construction of fuel and energy supply systems; 5) coordination of the cooperation with international government organisations to the extent specified by the Act.

Regardless of the tasks of the competent minister, specific tasks have been also entrusted to the Government Plenipotentiary for Strategic Energy Infrastructure appointed by the Prime Minister (Article 12a of the ELA). What is more, one must not forget that the supreme authority of the state energy policy is the Council of Ministers, which by way of a resolution – at the request of the minister competent for energy matters – adopts the state energy policy. The above act (document) is published through an announcement by the minister competent for energy matters in the Official Gazette of the Republic of Poland “Monitor Polski” (Article 15a of the ELA).

Specific tasks from the field of energy policy have been also assigned to independent regulators, including the President of the Energy Regulatory Office and the President of the Office of Competition and Consumer Protection.

In cooperation with the President of the Office of Competition and Consumer Protection, the President of the Energy Regulatory Office prepares a report on abuse of dominant positions by energy enterprises and their conduct contrary to the competition rules in the electricity market and submits it, by 31 July each year, to the European Commission (Article 15c section 1 of the ELA), together with the minister competent for energy matters, cooperates with the bodies of other European Union member states



in order to create in the European Union a fully competitive market of gaseous fuels and electricity, and in particular promotes and facilitates cooperation of transmission system operators as regards provision of cross-border interconnection capacity (Article 15f section 1 of the ELA), agrees draft development plans concerning the satisfaction of the current and future demand for gaseous fuels and electricity (Article 16 section 14 of the ELA), issues an invitation to tender, organizes and carries out tenders for the construction of new electricity generating capacities or implementation of projects reducing electricity demand and concludes with the tender participant whose proposal has been selected, a contract which specifies in particular the participant's obligations, types of economic and financial instruments enabling the construction of new generating capacities or implementation of projects reducing demand for electricity under preferential conditions, as well as the settlement rules for financial support resulting from such instruments (Article 16a sections 1–7 of the ELA).

The addressees of task-oriented norms as regards to the energy policy and the energy security policy are also authorities of self-government units.

Pursuant to Article 17 of the ELA, the self-government of a voivodeship takes part in the planning of energy and fuel supply within the area of the voivodeship to the extent specified in Article 19 section 5 of the Act and examines compliance of the energy and fuel supply plans with the state energy policy, whereas in accordance with the provisions of Article 19 section 5 of the ELA, draft assumptions to the heat, electricity and gaseous fuels supply plan are subject to review by the self-government of a voivodeship with reference to the coordination of cooperation with other communes and regarding compliance with the state energy policy. The authority competent to accomplish the above tasks – falling within the scope of government administration tasks – is the board of the voivodeship acting on behalf of the self-government of voivodeship (Article 14 section 2 of the Act of 5 June 1998 on self-government of voivodeship<sup>21</sup> in conjunction with Article 17 of the ELA).

The catalogue of public tasks in the field of energy policy to be performed by communes is much more extensive. Such form of the energy law regulation is a consequence of the provisions of legislative act establishing the state system, in accordance with which matters associated with satisfaction of collective needs of the local government community within the commune as regards the electricity, heat and gas supply belong to the commune's own tasks (Article 7 section 1 point 3 of the Act of 8 March 1990 on communal self-government<sup>22</sup>). In Article 18 section of the ELA, the legislator has specified and listed commune's own tasks as regards the electricity, heat and gaseous fuels supply, including among them the following: 1) planning and the organisation of heat, electricity and gaseous fuels supply within the territory of the commune; 2) planning of lighting

21 Journal of Laws of 2019, item 512 as amended.

22 Journal of Laws of 2019, item 506 as amended



located within the territory of the commune: a) public places, b) commune roads, poviats roads, voivodeship roads, c) national roads, other than motorways and expressways as specified by the Act of 21 March 1985 on public roads<sup>23</sup>, within the boundaries of a built-up area, d) certain national roads other than motorways or expressways as specified by the Act of 27 October 1994 on toll motorways and the National Road Fund<sup>24</sup>, requiring separate lighting intended for pedestrian or bicycle traffic, constituting additional roadways serving traffic from the areas adjacent to the road lane of a national road; 3) covering the costs of lighting, located within the commune: a) streets, b) squares, c) commune roads, poviats and voivodeship roads, d) national roads other than motorways and expressways as specified by the Act of 21 March 1985 on public roads within the boundaries of built-up area, e) certain national roads, other than motorways and expressways as specified by the Act of 27 October 1994 on toll motorways and the National Road Fund, requiring separate lighting; intended for pedestrian or bicycle traffic, constituting additional roadways serving traffic from the areas adjacent to the road lane of a national road; 4) planning and organisation of actions aimed at rationalisation of energy consumption and promotion of solutions that reduce energy consumption within the territory of the commune; 5) assessment of the potential for electricity generation from high-efficiency cogeneration<sup>25</sup> and energy efficient heating and cooling within the territory of the commune. The above tasks must be performed not only in accordance with the generally applicable laws (ratified international agreements, legal acts of the European Union, acts, implementing regulations and local law acts, including – which is clearly emphasised in Article 18 section 2 of the ELA – local spatial development plans and air protection programs), but also with the state energy policy (cf. Article 17 and Article 19 section 5 of the ELA) and directions of commune development included in the study of conditions and directions of spatial development of a commune – in the absence of the local spatial development plan (Article 18 section 2 point 1 of the ELA).

Specific public tasks relating to the implementation of the state energy policy are also assigned to energy enterprises<sup>26</sup> as well as to the operators of the electricity and gas transmission and distribution systems<sup>27</sup>. The above entities are obliged to draw up and update development plans about the satisfaction of the current and future demand for gaseous fuels and energy. The above entities are also entrusted with other obligations in the area of planning, forecasting, notification and coordination of actions (see Article 16 of the ELA).

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<sup>23</sup> Journal of Laws of 2018, item 2068 as amended.

<sup>24</sup> Journal of Laws of 2018, item 2014 as amended.

<sup>25</sup> Pursuant to Article 3 point 33) of the ELA 'cogeneration' is simultaneous generation in one process of thermal energy and electrical or mechanical energy.

<sup>26</sup> *V.* 3 point 12 of the ELA.

<sup>27</sup> *V.* Article 3 points 24–25 of the ELA.

In addition, pursuant to Article 16b of the ELA, the energy or combined energy transmission system operator<sup>28</sup> first of all performs the tasks needed to ensure the security of electricity supply, protection of consumer interests and environmental protection (section 1), while the profit of the energy or combined energy transmission system operator, as specified by the Act of 1 December 1995 on dividend payments by wholly owned State Treasury companies<sup>29</sup>, is primarily allocated to funding the performance of tasks and obligations referred to in Article 9c section 2 of the ELA. The above provision is not only a manifestation of statutory regulation of activity in the field of energy management, but also constitutes a serious form of interference in the freedom and independence of economic activity, justified, however, by important public reasons (Article 22 of the Constitution of the Republic of Poland), relating to the goals of energy policy and ensuring energy security.

Fourth, of separate and essential importance for the implementation of the state energy policy are the planning norms.<sup>30</sup>

In the content of this category of norms, the lawmaker specifies an internal or – in case of direct impact on the sphere of rights and obligations of external entities towards the state – a generally applicable normative plan or program for the implementation of the state policy in a given field, specifying in more detail the goals, directions, conditions and means of operation.

Essentially, two content levels of planning norms can be differentiated. The direct level of planning comprises the setting and defining of goals, conditions and directions to be taken in a specific field of state policy. At the statutory level, the planning norms within this scope are only set in general; they need to be further defined in the basic internally or generally applicable law enactment or enforcement documents. The indirect planning level is of executive (implementation) character in relation to the first level, as it sets the principles, methods and manners of its implementation.<sup>31</sup>

Planning norms are concretised in the so-called ‘planning acts (documents)’<sup>32</sup>, which can be of typically imperative or informative and advisory, educational or stimulating character. The goals, directions and conditions of implementation of a given type of state policy are concretised and further defined in documents called ‘plans’ (‘concepts’, ‘strategies’, ‘assumptions’), while a set of the necessary or possible actions serving the

28 V. Article 3 point 28) of the ELA.

29 Journal of Laws of 2019, item 426 as amended.

30 V. U. Di Fabio, *Die Struktur von Planungsnormen* in: *Planung. Festschrift für Werner Hoppe zum 70. Geburtstag*, eds. W. Erbguth, J. Oebbecke, H.-W. Rengeling, M. Schulze, München 2000, p. 75 et seq.

31 M. Kamiński, *Mechanizm i granice weryfikacji sądowoadministracyjnej...*, p. 122 et seq.

32 V. M. Stahl, *Szczególne prawne formy działania...*, p. 364 et seq.; J. Jeżewski, *Polityka administracyjna...*, p. 325 et seq.

implementation of the plan (or generally the assumed goals of the state policy in a given field) is defined in documents called 'programs'.

Planning norms are the substantive (material)-law basis for the content of the planning acts (documents). Pursuant to Article 14 and Article 15 section 1 of the ELA, the basic planning act (document) for energy policy and energy security referred to as the 'state energy policy'<sup>33</sup> specifies in particular: 1) the fuel and energy balance of the country; 2) the generation capacity of domestic fuel and energy sources; 3) the transmission capacity, including cross-border connections; 4) energy efficiency of the economy; 5) activities in the field of environmental protection; 6) development of the use of a renewable energy source installations; 7) volumes and types of fuel stocks; 8) directions of restructuring and ownership transformation of the fuel and energy sector; 9) directions of scientific and research work; 10) international cooperation. In addition, such a document must include: 1) assessment of the implementation of the state energy policy for the previous period; 2) a forecast covering the period of no less than 20 years; 3) a program of executive actions for a period of 4 years containing instruments for its implementation. The content determinants of the other planning acts in the field of energy policy are defined by other planning norms (e.g. Article 16 of the ELA specifies normative requirements for the content of development plans as regards the satisfaction of the current and future demand for gaseous fuels or energy).

Planning in the field of energy supply within the territory of the commune is of specific character. The commune executive authority (the president/mayor of the city) develops draft assumptions to the heat, electricity and gaseous fuels supply plan. The above draft assumptions are developed for the territory of the commune for a 15-year period and updated at least once every 3 years. The document should include, *inter alia*, an assessment of the current condition and expected changes in demand for heat, electricity and gaseous fuels and projects which rationalise the use of heat, electricity and gaseous fuels (Article 19 sections 1–3 of the ELA). The draft assumptions are available for public inspection for 21 days and a notice thereof is communicated in a manner generally accepted in a given locality. The persons and organisational units interested in the supply of heat, electricity and gaseous fuels within the commune have the right to submit proposals, objections and comments to the draft assumptions, while the competent commune council adopts assumptions to the heat, electricity and gaseous fuels supply plan, examining at the same time the proposals, objections and comments submitted when the draft assumptions were available for public inspection (Article 19 sections 6–8 of the ELA).

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33 V. R. Stankiewicz, *Prawotwórcza rola administracji w kształtowaniu sektora energetycznego (na przykładzie polityki energetycznej państwa)* in: *Legislacja administracyjna. Teoria, orzecznictwo, praktyka*, eds. M. Stahl, Z. Duniewska, Warszawa 2012, pp. 260–266.

A resolution of the competent commune council adopting the assumptions to the heat, electricity and gaseous fuels supply plan is a normative pattern for assessing the development plans of energy enterprises in respect of satisfying the current and future demand for gaseous fuels and energy (Article 16 of the ELA). If the above development plans do not guarantee implementation of the assumptions to the heat, electricity and gaseous fuels supply plan (Article 19 section 8 of the ELA), the commune executive organ (e.g. the president of the city) develops a draft heat, electricity and gaseous fuels supply plan for the territory of the commune or for part thereof. The draft plan is developed based on the assumptions adopted by the commune council and should be consistent therewith. The supply plan is adopted by the competent commune council (Article 20 sections 1–4 of the ELA). In addition, in order to implement the plan, the commune may conclude agreements with energy enterprises. If, however, implementation of the plan on the basis of the above-mentioned agreements is not possible, the commune council – in order to ensure the heat, electricity and gaseous fuels supply – may indicate by way of a resolution the part of the plan which actions taken within the area of the commune must be consistent with (Article 20 sections 5–6 of the ELA). In this way, through the above resolution – being an act of local law – energy enterprises are obliged to implement a specific part of the supply plan in order to ensure security of heat, electricity and gaseous fuels supply.

### **Concluding Remarks**

Finally, it is worthwhile to point out that the acts (documents) concretising the planning norms providing basis for the implementation of the state energy policy also include reports, forecasts and their updates drawn up by competent authorities, transmission and distribution system operators and energy enterprises (Article 15b-15c and Article 16 of the ELA). Although the planning documents of this type do not have an imperative character, they can have a significant impact on the further shaping and implementation of the state energy policy. Therefore, one may assume that the non-binding acts of the goal-oriented norms concretisation play a significant role in the process of energy policy realization.

## Literature

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#### SUMMARY

### **The Norms of National Law Forming the Basis for the Shaping and Implementing of State Policy in the Field of Energy Security. Discussion Based on the Polish legal Order**

The essential aim of the article is the theoretical analysis of the normative basis of the Polish state policy in the field of energy security. The analysis begins with the presentation of the state policy and energy policy concepts. The author argues that in the Polish legal order the concept of energy policy is concentrated around the premise of energy security. The next part of the analysis deals with the issues of categories of the norms shaping and implementing of the energy security policy in the Polish legal order.

This part of the considerations shows that the normative basis for the determination, implementation and verification of political actions taken by the public authorities in the field of energy security requires the use of specific normative structures. The analysis refers to the conception of 'goal-oriented norms'. The norms of this kind set binding goals, directions and conditions for the actions of state authorities as well in the field of energy policy. The types of the acts which concretize the goal-oriented norms (e.g. task-oriented norms; directional and determinative norms; planning norms) in the discussed field of state policy are also discussed.

Keywords: state policy; energy policy; energy security policy; Polish energy law; administrative law norms; goal-oriented norms in administrative law; task-oriented norms; planning norms; directional and determinative norms.

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